IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3805 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANILAL GORDHANBHAI BHATT NAVAGAM GHED - Petitioner(s)
Versus
MANAGER, NATRAJ CERAMIC & CHEMICALS - Respondent(s)

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Appearance :
MR PH PATHAK for Petitioner(s) : 1,
MR KV GADHIA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 29/06/2007

ORAL JUDGMENT

Shri P.H. Pathak, learned counsel for the petitioner; Shri K.V. Gadhia, learned counsel for the respondent.

2. The petitioner-workman, being aggrieved by the

award dated 12.10.99 passed by the Presiding Officer, Labour Court, Jamnagar in Reference L.C.J. No. 535/90 [old Reference L.C.R. No. 2105/86] is before this Court with a submission that in case like present, the learned Labour Court, instead of awarding a sum of Rs. 1500/- towards compensation, should have directed reinstatement with full back wages.

3. After taking me through the pleadings of the parties and the findings recorded by the Labour Court, Shri Pathak submitted that if the Labour Court was of the opinion that present was a case of transfer, then, it was required to record its finding that whether that transfer was legal and whether non-joining on the part of the present workman was justified. He also submits that the workman had worked for more than 240 days, while the other party, which was possessing the record, instead of producing the record, simply stated on oath that the workman did not work for 240 or more days. He submitted that if the workman had worked for 240 or more days in 12 calendar months just preceding the date of retrenchment/illegal termination, then, such order would be bad if provisions of Section 25F of the Industrial Disputes Act, 1947 are not followed.

4. Shri Gadhia, learned counsel for the respondent, on the other hand submits that the basic burden was upon the workman to prove that he had worked for 240 days. He submits that present is a case

where the Labour Court has observed that almost after 14 years of the alleged abandonment of termination of service, reinstatement should not be allowed.

5. After hearing the parties, I am of the opinion that the award made by the learned court below cannot be allowed to stand. If the court below was of the opinion that the workman did not work for 240 or more days acquiring such status, then, the court was required to reject the claim and if the court was of the opinion that he had worked for 240 or more days, then, the court should have taken into consideration the effect of Section 25F of the Act.

6. Setting aside the award made by the learned Labour Court, I remand the matter to the said Court with a direction that it shall allow the parties to lead further evidence and if the workman makes an application for production of the official records which are in custody of the establishment, then, such records would be summoned by the learned Labour Court. In case the establishment says that they do not have the said records, then, the Court shall take note of the fact while recording findings in the matter. After giving due opportunity of hearing to the parties, the learned court below shall decide the matter afresh in accordance with law and the observations made aforesaid preferably within eight months from the date of appearance of the parties. The parties shall appear before the

learned Labour Court on 2nd August, 2007 and shall file copy of this order before the Labour Court enabling the Labour Court to know that what it is required to do in the matter.

7. The petition is allowed to the extent indicated above. Rule is made absolute accordingly. No costs.

8. Let the office also send copy of this order to the learned Labour Court.

[R.S. GARG, J.]

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